



Paper No. 11

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**APR 07 2004**

**OFFICE OF PETITIONS**

**ON PETITION**

In re Application of  
Dewberry, James Arthur  
Application No. 09/870,895  
Filed: May 31, 2001  
For: Adverturf

This is a decision on the petition under 37 CFR 1.137(b), filed August 7, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment under 37 CFR 1.121 (Notice) mailed September 18, 2002. The Notice set a period for reply of one (1) month from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 19, 2002. A Notice of Abandonment was mailed on February 20, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,<sup>1</sup>
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.<sup>2</sup>

The instant petition lacks items (2) and (3).

In regard to item (2), at the time the petition was submitted, the correct amount for the small entity petition fee was \$650.00. Petitioner only submitted \$640.00. Effective October 1, 2003, the petition fee increased to \$665.00. Accordingly, an additional \$25.00 must be submitted.

<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).

In regard to item (3), the instant petition contains a power of attorney appointing Donald E. Hayes, Jr., who is listed as INACTIVE and is unable to practice before the Patent and Trademark Office (Office). The Office does not communicate with attorneys or agents who have been suspended or excluded from practice. Accordingly, the Office action is being mailed to you as the inventor. Applicant may, of course, file a new power of attorney in the application to have a registered attorney or agent represent you before the Office. In the absence of an attorney or agent of record, all amendments and other papers filed in the application must be signed: (1) by you; or (2) if there is an assignee of record of an undivided part interest, by you and such assignee; or (3) if there is an assignee of the entire interest, by such assignee; or (4) by a registered patent attorney or agent, not of record, who acts in a representative capacity under the provisions of 37 CFR 1.34(a). Therefore, the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional cannot be accepted at this time.

Accordingly, the Power of Attorney cannot be accepted at this time and all correspondence will continue to be sent to the address of record. The applicant may wish to resubmit the petition himself to revive the above-identified application.

Applicant may obtain a list of registered patent attorneys and agents located in your area by writing to the Commissioner of Patents and Trademarks, Box OED, Washington, DC 20231, or by calling the Office of Enrollment and Discipline at (703) 306-4097.

Further correspondence with respect to this matter should be addressed as follows:

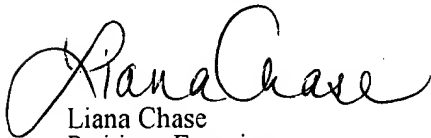
By mail: Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the existing Customer Window located at:**

2011 South Clark Place  
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Room 1B03  
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306**.

Telephone inquiries should be directed to the undersigned at (703) 306-0482.



Liana Chase  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy